

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

GEORGE TOWN, 1884-1885

No. 440

THE UNITED STATES PLAINTIFF IN ERROR

VS

GEORGE A. PUTNEY

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Court at Washington, D.C., this 1st day of January, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 789.

THE UNITED STATES, PLAINTIFF IN ERROR.

VS.

CONRAD A. PLYLER.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF NORTH CAROLINA.

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1

Transcript of record.

The United States of America, Western District of North Carolina,
to wit:

At a District Court of the United States for the Western District of North Carolina, begun and held in the court-house in the city of Charlotte, on the first Monday in October, A. D. 1910, being the 3d day of same month, in the year of our Lord one thousand nine hundred and ten. Present the Honorable James E. Boyd, judge of the Western District of North Carolina.

Among other were the following proceedings, to wit:

Theretofores, proceedings were had in said cause in the said District Court of the United States for the Western District of North Carolina, at Charlotte, and which said proceedings were as follows, to wit:

Be it remembered that at a regular term of the District Court of the United States begun, opened, and held for the Western District of North Carolina, in the city of Charlotte, N. C., on the second Monday in June, the same being 14th day of said month in the year of our Lord one thousand nine hundred and nine; present, the Honorable James E. Boyd, United States district judge, presiding and holding said court; present also, A. E. Holton, esquire, U. S. attorney; J. M. Millikan, esquire, U. S. marshal, by T. W. Vincent, deputy U. S. marshal; and H. C. Cowles, clerk of said court.

Among other were the following proceedings, to wit:

On Tuesday, June 15, 1910, during said term of court, upon the order of the court duly entered, a grand jury of good and lawful men are duly drawn, to serve as such at said term of court, as follows:

1, T. H. Ford; 2, W. W. McKee; 3, Luther Whitener; 4, J. F. Caldwell; 5, John A. Stevens; 6, G. B. Stowe; 7, M. A. Emmerson; 8, L. A. Wilkerson; 9, John F. Burleson; 10, J. J. Lambright; 11, John Green; 12, H. C. Hubbard; 13, J. T. R. Dameron; 14, L. H. Patterson; 15, W. H. Helms; 16, J. G. Herndon; 17, M. H. Ware; 18, P. W. Hamot; 19, G. M. Laney; 20, John A. Secrest; 21, J. A. Leonhardt.

Thereupon, G. B. Stowe is duly appointed foreman of the said grand jury and is duly sworn as such. Thereupon the rest of the said grand jurors are duly sworn as such, and the said grand jury is charged by the court. And afterwards, to wit, on June 16th, 1909, during said term of the said court, the following further proceedings are had in said cause, to wit:

The grand jury in a body comes into open court and the several names of the individual members of the grand jury being called by the clerk, they all respond and are present, and thereupon the grand jury, through the foreman, presents in open court the following bill of indictment:

2

Bill of indictment.

In the District Court of the United States, Western District of North Carolina, at Charlotte, June term, 1909.

The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present

that Conrad A. Plyler, late of said district, laborer, on the 17th day of February, 1908, and on other days, both before and since said date, at and in said district and within the jurisdiction of this court, being then and there an applicant for the position of rural letter carrier in the United States mail service, on rural route No. 3, from Waxhaw, in the county of Union, State of North Carolina, which said position of rural carrier was in the competitive classified civil service of the United States, and requiring his qualifications to be passed upon by the Civil Service Commission of the United States, which said commission was authorized and empowered under the act of Congress of the United States to make regulations for and have control of such examinations, and to determine his eligibility for appointment to said position; and under the provisions of said act of Congress and the regulations of the said Civil Service Commissions had prior thereto made regulations requiring applicants for such positions to file with said commission in writing for an examination for carrier in the rural free delivery service, the said Conrad A. Plyler being then and there an applicant for the position of rural free delivery carrier did, on the 19th day of February, 1908, file and cause to be filed an application in writing, as required by said Civil Service Commission, for rural free delivery carrier on route No. 3, from Waxhaw, North Carolina, then and there required to be filed as aforesaid, and did then and there unlawfully, wilfully, and feloniously, with intent to defraud the United States, falsely make and forge, and caused to be falsely made and forged, a certain paper writing then and there required, and known as "Voucher No. 3," attached to and in connection with said application, in words and figures as follows, to-wit:

Voucher No. #.

(Follow carefully instructions over Voucher No. 1.)

1. What is your age? (Age of voucher, not applicant, is wanted.)
46.
2. What is your occupation? Farming.
3. Do you reside within the territory supplied or to be supplied by a rural route from the post office names in answer to question 1 of the application? Yes.
4. Are you a patron on a rural free delivery route from the post office named in answer to question 1 of the application? Yes. If not, do you intend to be a patron of a route that is about to be established?
5. What is the applicant's name? (Answer should agree with signature of applicant.) Conrad A. Plyler.
6. How long have you been acquainted with the applicant? During life.
7. Does the applicant live within the territory supplied or to be supplied by the post office named in answer to question 1 of the application? Yes.
8. How long to your knowledge has he resided there? During life.

9. Are you related to the applicant? No.

10. To the best of your knowledge, does the applicant use brandy, whiskey, beer, morphine of opium? No. If so, which, and to what extent in each case?

11. Are you aware of any conditions (physical or otherwise) tending to disqualify the applicant for the public service? No.

12. Is the applicant a person of good moral character and of good repute? Yes.

13. Do you believe that the applicant would make a faithful and satisfactory rural letter carrier? Yes.

14. Do you believe the applicant can furnish the necessary bond and equipment (horse and wagon or cart)? Yes.

15. Would you be willing to trust the applicant with your mail, and do you think any one would be safe in going on his bond for the faithful performance of the work? Yes.

4 16. Are all the answers to the above question written in your own hand writing and true, to the best of your knowledge and belief? Yes.

(Signature of voucher:) Romulus D. Sapp.

(P. O. address of voucher:) Waxhaw, N. C. R. F. D. No. 5.

Date: February 17th, 1908.

By then and there forging and writing the name of this the said Romulus D. Sapp thereto as having signed the same, without the knowledge or consent of the Romulus D. Sapp, and by then and there falsely stating therein certain false statements in answer to questions therein propounded, among other things the following:

16. Are all the answers to the above questions written in your own hand writing and true, to the best of your knowledge and belief? Yes. When in truth and in fact the said answer thereto was not in the hand writing of the said Romulus D. Sapp.

Second count: And the jurors aforesaid, upon their oath aforesaid, do further present that afterwards, to wit, upon the day and year aforesaid, and on other days both before and since said date, at and in said district and within the jurisdiction of this court, Conrad A. Plyler, late of said district, laborer, did then and there unlawfully, wilfully and fraudulently, with intent to defraud the United States, transmit and present and caused to be transmitted and presented to the office of certain officers of the United States, to wit, the Civil Service Commission of the United States, the said paper writing containing the false jurat as set out in the first count of this bill of indictment as aforesaid, for the purpose aforesaid, well knowing the same to be false and forged, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States. (5418 R. S.)

5 Third count: The grand jurors for the United States of America, within and for the Western District of North Carolina, upon their oath present that Conrad A. Plyler, late of said district, laborer, on the 17th day of February, 1908, and on other days

both before and since said date, at and in said district and within the jurisdiction of this court, being then and there an applicant for the position of rural letter carrier in the United States mail service on rural route No. 3, from Waxhaw, in the county of Union, State of North Carolina, which said position of rural carrier was in the competitive classified civil service of the United States, and requiring his qualifications to be passed upon by the Civil Service Commission of the United States, which said commission was authorized and empowered under the act of Congress of the United States to make regulations for and have control of such examinations, and to determine his eligibility for appointment to said position; and under the provisions of said act of Congress and the regulations of the said Civil Service Commission had prior thereto made regulations requiring applicants for such positions to file with said commission in writing for an examination for carrier in the Rural Free Delivery Service, the said Conrad A. Plyler being then and there an applicant for the position of rural free delivery carrier did on the 19th day of February, 1908, file and cause to be filed an application in writing as required by said Civil Service Commission for rural free delivery carrier on route No. 3, from Waxhaw, North Carolina, then and there required to be filed as aforesaid, and did then and there unlawfully, wilfully, and feloniously, with intent to defraud the United States, falsely make and forge and caused to be falsely made and forged, a certain paper writing then and there required and known as "Medical certificate," attached to and in connection with said application, in words and figures as follows, to wit:

MEDICAL CERTIFICATE.

This certificate must be filled out by some practicing physician, after a thorough examination of the applicant.

N. B.—The examining physician is requested to read this
6 certificate carefully before beginning the examination of the applicant.

I, W. H. Sapp, a practicing physician in the county of Lancaster, State (or Territory) of South Carolina, do hereby certify that I have carefully examined Conrad A. Plyler, the applicant (write name to agree exactly with applicant's signature) who signed the above application, and hereby state that I believe him physically and mentally capable of performing the duties of rural letter carrier, under all conditions of weather.

(If the applicant has any physical defect, describe fully. See question 10 and 10a and submit full statement.)

(Signature of physician:) W. H. Sapp, M. D.

(P. O. address of physician:) Waxhaw, N. C. R. F. D. # 5.

Date: February 17, 1908.

by then and there forging and writing the name of said W. H. Sapp to the said certificate as having signed the same, without the knowl-

edge and consent in such case of the said W. H. Sapp, contrary to the form of the statute in such case made and provided against the peace and dignity of the United States.

A. E. HOLTON, *U. S. Attorney.*

[Endorsement.]

United States vs. Conrad A. Plyler, Union County.

Indictment: Forging and transmitting affidavit in connection with application for civil-service examination.

U. S. witnesses: Augustus M. Eubanks, xW. H. Sapp, xR. D. Sapp, xAugustus M. Eubanks.

Those marked thus (x) sworn by the foreman of and in the presence of the grand jury.

G. B. STOWE, *Foreman of Grand Jury.*

A true bill.

G. B. STOWE, *Foreman.*

Filed in this office, June 16, 1909.

H. C. COWLES, *Clerk.*

7 Recognizance of defendant for appearance at October term, 1910, of this court at Charlotte, N. C.

UNITED STATES OF AMERICA.

South Carolina District.

Be it remembered, that on the 3rd day of September, in the year of our Lord one thousand nine hundred and ten, C. A. Plyler, W. B. Plyler, and L. S. Elliott personally appeared before me, who acknowledged themselves to be jointly and severally indebted to the United States of America in the sum of one thousand dollars, to be levied of their several lands and tenements, goods and chattels, respectively, to and for the use of the said United States of America, if the above mentioned C. A. Plyler shall fail in performing the condition underwritten.

The condition of this recognizance is such that if the said C. A. Plyler shall personally appear before the judge of the United States of America at the next District Court of the said United States of America for the District of South Carolina, to be holden at the usual place of judicature in Charlotte, N. C., on the first Monday Oct., 1910, next, then and there to answer to a bill of indictment to be preferred against him for and to do and receive what shall be enjoined by the court, and not to depart the court without license, then this recognizance to be void, or else to remain in full force and virtue.

CONRAD A. PLYLER. [L. S.]

W. B. PLYLER. [L. S.]

L. S. ELLIOTT. [SEAL.]

Taken and acknowledged the day and year above written, before me.

J. W. MARSHALL, *U. S. Com.* [SEAL.]

8 UNITED STATES OF AMERICA.

South Carolina District.

Personally appeared before me, J. W. Marshall, U. S. commissioner, L. S. Elliott and W. B. Plyler, who, being duly sworn, saith, on oath, that they are sureties on the within bond, and that they are worth the amount of the bond over and above their liabilities and home-
stead exceptions.

L. S. ELLIOTT.
W. B. PLYLER.

J. W. MARSHALL, *U. S. Com.*

As per conditions of letter hereto attached.

(Endorsement.)

Filed in this office, September 12, 1910.

H. C. COWLES, *Clerk.*

And on September 21st, 1910, the defendant files in our said court a demurrer to the bill of indictment in said cause, in the words and figures as follows, to wit:

9

Demurrer.

District Court of the United States, Western District of North Carolina, at Charlotte, October term, 1910.

| | |
|---------------|-------------|
| UNITED STATES | } No. 2816. |
| <i>vs.</i> | |
| C. A. PLYLER. | |

Now comes counsel for defendant and demurs to the indictment herein upon the ground that there can be no defrauding of the Government as charged under sec. 5418, R. S.

J. K. HENRY,
Attorney for Defendant.

(Endorsement.)

Filed in this office September 21, 1910.

H. C. COWLES, *Clerk.*

Demurrer sustained. U. S. attorney excepts. Exceptions allowed.

And at a regular term of the United States District Court for said district at Charlotte, N. C., begun, opened, and held on the first Monday in October, A. D. 1910, it being the third day of the said month, the following further proceedings are had in said cause, to wit:

On October 4th, 1910, during said term of court, the case is called for trial.

The court being of the opinion that the act complained of was not a fraud against the United States in contemplation of section 5418, R. S., sustained the demurrer.

To this ruling the United States attorney excepted.

Exceptions allowed.

10

Bill of exceptions.

United States District Court, Western District of North Carolina, at Charlotte, October term, 1910.

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|-------------------|-------------|
| UNITED STATES | } No. 2816. |
| <i>vs.</i> | |
| CONRAD A. PLYLER. | |

This is an indictment against Conrad A. Plyler under section 5418, R. S., in connection with an application for the position of rural letter carrier in United States mail service, rural route number 3, from Waxhaw, in the county of Union, State of North Carolina, which said position of rural carrier was in the competitive classified service of the United States and requiring his qualifications to be passed upon by the Civil Service Commission to determine his eligibility to the appointment for said position.

The bill of indictment, which is set out in the record, contains three counts.

The 1st count charges the said Conrad A. Plyler with forging a certain paper writing then and there required, known as voucher No. 3, attached to and in connection with said application, by forging the name of Romulus D. Sapp to voucher No. 3, among other things certifying to the age, occupation, full name of applicant, residence of applicant, his habits, physical condition, fidelity, and financial ability, and further certifying that all the answers to the above questions were written in the handwriting of the said Romulus D. Sapp, with intent to defraud the United States.

The 2nd count charges that the said Conrad A. Plyler, with intent to defraud the United States, did transmit and cause to be transmitted to the Civil Service Commission the said paper writing containing the false vouchers set out in the first count of bill of indictment.

11 The 3rd count charges the said Conrad A. Plyler with forging the medical certificate of one W. H. Sapp, attached to and in connection with the said application to the effect that the said W. H. Sapp had examined the said Conrad A. Plyler and found him physically and mentally capable of performing the duties of rural letter carrier, with intent to defraud the United States.

The indictment is set out in the record and contains the facts.

Demurrer.

District Court of the United States, Western District of North Carolina, at Charlotte, October term, 1910.

UNITED STATES
vs.
CONRAD A. PLYLER. }

Now comes counsel for defendant and demurs to the indictment herein upon the ground that there can be no defrauding of the Government as charged under section 5418, R. S.

J. K. HENRY,
Attorney for Defendant.

The court being of opinion that the acts complained of was not a fraud against the United States in contemplation of section 5418, R. S., sustained the demurrer, and discharged the defendant.

To this ruling the United States attorney excepted.

Exception allowed. signed, and sealed.

JAS. E. BOYD, *U. S. Judge.*

[Endorsement.]

Filed in this office, October 21, 1910.

H. C. COWLES, *Clerk.*

12

Assignment of errors.

In the District Court of the United States, Western District of North Carolina, at Charlotte, October term, 1910.

UNITED STATES
vs.
CONRAD A. PLYLER. } No. 2816.

The plaintiff, the United States, through A. E. Holton, U. S. attorney for the Western District of North Carolina, makes the following assignment of errors which it avers were made by the court in rendering its judgment upon the demurrer filed in this cause, to wit:

I.

That the court erred in holding that the act complained of was not a fraud against the United States in contemplation of section 5418, R. S.

II.

That the court erred in sustaining the demurrer.

III.

That the court erred in holding that the United States could not be defrauded in contemplation of sec. 5418, R. S., by a false and fraudulent statement contained in an application for an examination under the Civil Service Commission.

Wherefore the plaintiff in error, the United States, prays that the judgment of the said District Court may be reversed.

A. E. HOLTON, *U. S. Attorney.*

(Endorsement.)

Filed in this office, October 21, 1910.

H. C. COWLES, *Clerk.*

13 *Petition for writ of error and order allowing same.*

In the District Court of the United States, Western District of North Carolina, at Charlotte.

| | |
|-------------------|-------------|
| UNITED STATES | } No. 2816. |
| <i>vs.</i> | |
| CONRAD A. PLYLER. | |

And now comes the plaintiff herein, the United States, and says that on the 5th day of October, 1910, judgment was rendered in the U. S. District Court at Charlotte, in favor of the defendant herein named, against the plaintiff, in which judgment and proceedings in said cause certain errors were committed to the prejudice of this plaintiff, all of which will more fully appear in detail in the assignment of errors which is filed with this petition.

Wherefore this plaintiff, the United States, prays that a writ of error may issue in its behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the United States Supreme Court.

A. E. HOLTON, *U. S. Attorney.*

Upon the foregoing petition and assignment of errors attached it is ordered that a writ of error issue as prayed for in the petition.

This 21st day of October, 1910.

JAS. E. BOYD, *U. S. Judge.*

(Endorsement.)

Filed in this office October 21, 1910.

H. C. COWLES, *Clerk.*

*Writ of error.*UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the District Court of the United States for the Western District of North Carolina, at Charlotte, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between United States, as plaintiff, and Conrad A. Plyler, as defendant, a manifest error hath happened, to the great damage of the said United States as by said complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, to wit, on the 18th day of November, 1910, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable John M. Harlan, ex officio Chief Justice of the United States, the 21st day of October, in the year of our Lord one thousand nine hundred and ten.

[SEAL.]

H. C. COLES,

Clerk of the Circuit Court of the United States.

Allowed by—

JAS. E. BOYD,

United States Judge.

(Indorsed:) No. 2816. Writ of error. Filed in this office Oct. 21, 1910. H. C. Cowles, clerk.

*Citation.*UNITED STATES OF AMERICA, *ss:**To Conrad A. Plyler, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, to wit, on the 18th of Nov., 1910, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Western District of North Carolina, at Charlotte, wherein United States is plaintiff in error, you are defendant in error, to show cause, if any there be, why the judgment rendered

against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John M. Harlan, ex-officio Chief Justice of the Supreme Court of the United States, this 21st day of October, in the year of our Lord one thousand nine hundred and ten.

JAS. E. BOYD, *U. S. Judge.*

16 (Indorsed:) Service of the within accepted this October 22nd, 1910. J. K. Henry, attorney for defendant, Conrad A. Plyler. Filed in this office Nov. 1, 1910, H. C. Cowles, clerk.

17 *Order to transmit record.*

And, thereupon, it is ordered by the court here that a transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the said Supreme Court of the United , and the same is transmitted accordingly.

Teste.

H. C. COWLES, *Clerk.*

Clerk's certificate.

I, H. C. Cowles, clerk of the District Court of the United States for the Western District of North Carolina, at Charlotte, N. C., do certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case United States of America, plaintiff, against Conrad A. Plyler, defendant, as fully as the same remains on file and of record in my office.

In testimony whereof, I hereunto set my hand and affix the seal of the said court at my office in Charlotte, in said district, on this the 2d day of November, A. D. 1910.

[SEAL]

H. C. COWLES,
Clerk of said Court.

(Indorsement on cover:) File No., 22410. W. North Carolina. D. C. U. S. Term No., 789. The United States, Plaintiff in Error, vs. Conrad A. Plyler. Filed November 18, 1910. File No., 22410.

In the Supreme Court of the United States.

OCTOBER TERM, 1911.

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|---------------------------------|------------|
| THE UNITED STATES, PLAINTIFF IN | } No. 440. |
| Error, | |
| v. | |
| CONRAD A. PLYLER. | |

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA.*

BRIEF AND ARGUMENT FOR THE UNITED STATES.

STATEMENT.

Plyler was indicted for a violation of section 5418 of the Revised Statutes, which provides:

Every person who falsely makes, alters, forges, or counterfeits any bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for the purpose of defrauding the United States, or utters or publishes as true any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, for such purpose, knowing the same to be false, forged, altered, or counterfeited, or transmits to or presents at the

office of any officer of the United States any such false, forged, altered, or counterfeited bid, proposal, guarantee, official bond, public record, affidavit, or other writing, knowing the same to be false, forged, altered, or counterfeited, for such purpose, shall be imprisoned at hard labor for a period not more than ten years, or be fined not more than one thousand dollars, or be punished by both such fine and imprisonment.

Plyler desired the position of rural letter carrier in the United States mail service, on rural route No. 3, from Waxhaw, Union County, N. C., a position in the competitive classified civil service. Under the laws of the United States and the regulations of the Civil Service Commission he was required to submit to examination, and in connection with this to submit a voucher, in writing, by some one acquainted with him as to his habits, character, and qualifications for the post. (R., 2.) He forged this voucher in the name of one Romulus D. Sapp. (R., 3.) This is the substance of the first count.

The second count charges him with transmitting this voucher to the Civil Service Commission. (R., 3.)

A medical certificate as to his physical and mental qualifications was also required by the regulations. He forged this in the name of Dr. W. H. Sapp. (R., 4.) This is the subject of a third count.

The indictment charges in each count that Plyler acted unlawfully, wilfully, and feloniously, and with intent to defraud the United States.

There was a demurrer to the indictment upon the sole "ground that there can be no defrauding of the Government as charged under section 5418, R. S.," and this was sustained, "the court being of the opinion that the act complained of was not a fraud against the United States in contemplation of section 5418, R. S." (R., 6, 7.)

The contention of Plyler and the view of the District Court was that the fraud contemplated by the statute in question was fraud upon the pecuniary or property rights of the United States.

The case on the side of the Government presents for consideration the following

PROPOSITION.

Section 5418 prohibits the false making of any writing which would work a fraud upon the United States in its pecuniary or property rights or in the exercise of its governmental powers and duties.

United States v. Lawrence, 13 Blatchf. C. C., 211;

State v. Kimball, 50 Me., 409;

State v. Boasso, 38 La. Ann., 202;

Cross v. North Carolina, 132 U. S., 131;

United States v. Bunting, 82 Fed., 883;

Palmer v. Colladay, 18 D. C. App., 426;

Curley v. United States, 130 Fed., 1;

Haas v. Henkel, 216 U. S., 462;

Hyde v. Shine, 199 U. S., 62.

Property rights of the Government are the very least of its rights. They are mere incidents, although

necessary ones, to the discharge of those functions for which the Government was established, and the proper discharge of which is its paramount concern.

The Government can act only through officers and agents and can serve its high purpose only as these are honest and efficient.

Whatever means are provided for the selection of these officers and agents, whether the process is one of election by the citizens or of appointment by duly constituted authorities, the purpose is to secure men of character and capacity, and the means provided are presumed to be adapted to its accomplishment.

The perversion of those means is a fraud, is so regarded in popular opinion and so designated in common speech. It is a fraud in the common speech of our people to secure the naturalization of aliens not entitled thereto, to repeat at elections, to stuff the ballot box, to falsify election returns. We apply the term fraud to practices of this kind just as freely, and the application is as apt, as to cheating devices, whose purpose is immediate pecuniary gain.

This is true of our legal as well as our common parlance. The laws of the States and of the United States use the terms "fraud" and "fraudulent" with respect to corrupt practices in naturalizations and elections.

Plyler forged a voucher and certificate, required by law, for the purpose of securing an appointment to the postal service. Lawyer and layman would concur in characterizing his conduct as fraudulent.

What he attempted was to secure for himself a position, with its pay, to which he was not entitled.

The man who would resort to forgery to secure a position of trust is surely not deserving of the trust. How secure would the property of the United States and its mails have been in his keeping?

It requires no great stretch of language beyond its ordinary use to designate his conduct as a fraud upon the pecuniary or property rights of the Government.

But the statute under which he was indicted is not limited in its terms as to the subject-matter of the fraud. Its words as to this are, "for the purpose of defrauding the United States." In what respect? In any respect. The language is broad and contains no qualification.

The limitations as to the statute are all as to the means by which the fraud is to be accomplished. It must be by means of a writing. What kind of a writing? The statute gives answer, "any bid, proposal, guarantee, official bond, public record, affidavit, or other writing."

"Bids, proposals and guarantees" have relation to contracts—matters of a pecuniary nature. "Official bonds" are of the means employed to secure integrity in office as well as to indemnify against the want of it. The requirement of the bond tends to keep out of position men who are not of good repute for honesty. "Public records" are varied in their nature as the functions and operations of government. "Affidavits" may relate to anything and everything in

which Government has an interest. "Other writings" are added for the manifest purpose of giving a wide rather than a narrow scope to the law.

The only limitation in this statute upon the kind of writing is that which results from the use for "the purpose of defrauding the United States." If a writing is not apt for that purpose and can have no tendency to accomplish it, it is not within the terms of the statute.

Fraud is fertile in devices. Its methods are varied as they are unscrupulous. Statutes to prohibit and punish frauds are therefore general and comprehensive in their terms, and inclusive rather than exclusive. There is no presumption of legislative intent to favor any particular form of fraud. And so in the present case, as the different terms employed are not synonymous, there is no reason for denying to any of them the full significance of its usual import.

In *United States v. Lawrence* (13 Blatchf. C. C., 211) the defendant was indicted under this statute for some fraud on the customs, committed by forging what is known as the "owner's oath;" and it was contended in his behalf that the term "other writing" should be restricted to writings of the same kind with those specifically mentioned in the statute. The court said (p. 212):

* * * Various writings are mentioned, but these writings have no common object, nor any characteristic features common to all, from which to infer an intention to restrict the effect of the provision to any particular

class of writings. The language of the statute furnishes, therefore, no criterion by which to restrict its general words.

But if we apply the rule of *ejusdem generis*, the papers Plyler forged answer the description of the statute. They are not of the same kind as bids, proposals, or guarantees. Neither are they in the nature of official bonds, although the voucher, among other things, had reference to his ability to give a bond. But both the voucher and the medical certificate were of like general kind with affidavits, as they were solemn statements of facts material to be considered in transacting the business in hand. They were official records required by the Civil Service Commission to be used as the basis of official action. And they certainly were writings concerning a matter of governmental interest.

Is there anything in the modes of falsification which limits the prohibition of the statute to pecuniary frauds? The statute reads "every person who falsely makes, alters, forges, or counterfeits any bid," etc. The term "counterfeit" is commonly applied to money; but that is not meant here, for other sections of the statutes deal specifically with the counterfeiting of money. "Forgery" usually has reference to papers which assume to create private pecuniary obligations or to affect property rights, but is not confined entirely to such papers. The term "falsely makes" is not at all restricted as to the kind of papers to which it applies.

The various terms used in this statute are to be found in other statutes and to signify forgery in its broad sense of falsely making. They are so used, for example, in section 5425, Revised Statutes, relative to naturalization frauds. The forgery, counterfeiting, antedating, or procuring by fraud a certificate of citizenship is prohibited and punished. And surely if there may be forgery, counterfeiting, and fraud in the matter of being admitted to citizenship in the United States, there may be like offenses in the matter of securing appointment to office.

The courts, State and Federal, when dealing with these terms as found in various statutes, have not been disposed to restrict their application.

In *State v. Kimball* (50 Me., 409) two counts of the indictment were based on section 1 of chapter 121 of Maine Revised Statutes of 1857, wherein it was provided:

Whoever, with intent to defraud, falsely makes, alters, forges, or counterfeits, any public record or proceeding filed or entered in any court; or process issued, or purporting to be, by a competent court, magistrate, or officer; or attestation * * * receivable as legal proof in relation to any matter * * * shall be punished, etc.

The other two counts were based upon the common law. The indictment charged the forging and uttering of a deposition used on the trial of a libel for divorce. On a motion in arrest of judgment the Supreme Court of Maine held all counts of the indict-

ment valid. The defendant contended "that the judgment should be arrested because the deposition does not purport to be proof in relation to any pecuniary demand or matter." The court answered this objection, saying (p. 421):

* * * The statute certainly does not admit of the limited construction contended for. A person may be defrauded of the dearest rights, besides those appertaining to property of pecuniary value.

As to the validity of the counts based on the common law, it said (p. 425):

The forging of any writing, by which a person might be prejudiced, is punishable as a forgery at common law. *State v. Ames & al.*, 2 Maine, 365; 3 Chitty's Crim. Law, 1022. It is said, in *Commonwealth v. Ayer*, 3 Cush., 150, that "forgery at common law is defined to be a false making, a making *malo animo*, of any written instrument, for the purpose of fraud and deceit."

In *State v. Boasso* (38 La. Ann., 202) the statute involved punished on conviction "whoever shall forge or counterfeit * * * any certificate or attestation of any public officer in any matter wherein his certificate or attestation is receivable and may be taken as legal proof." Boasso had forged a certificate of marriage with Mary Kuhn, and he contended that this did not offend the law because the fraud was not intended to deprive any person of property. The court, however, refused this narrow interpretation of the law.

In 1823 Congress passed an act making it a felony—
 if any person or persons shall falsely make,
 forge, or counterfeit * * * any deed,
 power of attorney, order, certificate, receipt
 or other writing, for the purpose of obtaining
 or receiving * * * from the United States
 * * * any sum or sums of money.

This, with some amplification, but with no alteration of meaning as to the offense, is found preserved as section 5421, Revised Statutes, of 1878. Under this section the fraud contemplated was of a pecuniary nature.

Section 5418, the section here involved, in substantially its present form, was enacted in 1866. The act of 1866 differs from that of 1823 in the character of the writings involved and in the nature of the fraud. The first is a pecuniary fraud and the second is a fraud of any sort capable of being practiced upon the Government.

Referring to this later section, this court said, in *Cross v. North Carolina* (132 U. S., 131, 138):

* * * The object of that section was to protect the general government against the consequences that might result from the forgery, alteration or counterfeiting of documents, records or writings, that had some connection with its business, as conducted by its own officers.

United States v. Bunting (82 Fed., 883) differs from the case at bar only in immaterial details. The fraud attempted was upon the Civil Service Commission in

connection with an effort to secure an appointment to the public service. The defendants pleaded guilty, but the question was suggested whether the statute covered the case charged. The court said (p. 884):

When this case first came before me, I was under the impression that the defendants were indicted under the old law, charged with conspiracy to defraud the United States, and as it was not shown that either of them had defrauded the government of money or other property, I was in doubt whether the statute covered the charge. Since that time, however, I have carefully examined the bills of indictment as well as the sections of the Revised Statutes under which the defendants are charged, and am of opinion that the offense comes within their terms.

Section 5418 literally as well as in spirit covers the case. The offense charged is a grave one; an attempt to prejudice the rights of the United States in the administration of the civil service statutes. Had the defendants been successful one of them would have obtained a privilege which would have placed him in a favored class and have entitled him to an advantage over others in the appointment to office.

The privilege is a valuable one, and the fraud of the defendants was therefore in prejudice of the government.

The sections under which the defendants are indicted are broad and sweeping and the offense I think is within their provisions.

In *Palmer v. Colladay* (18 D. C. App., 426) what was meant by "defraud" in this statute was up for consideration. The court said (p. 433):

It is claimed by appellee that to defraud the United States, must mean to deprive it of money, wrongfully, or of something of money value; and that a falsehood or trick by which its officers are deceived in the matter of selecting those who are to perform work for it, could not be a fraud against the United States. We do not agree to this proposition.

The Civil Service Commission is a legal agency of the United States, created by act of Congress; and through it the President undertakes to find and appoint such persons as may best promote the efficiency of the civil service; and to that end regulations are prescribed by means of which the age, health, character, knowledge, and ability for the branch of service into which he seeks to enter, of each candidate may be fully ascertained.

If falsehoods are imposed upon the persons charged with the duty of ascertaining these qualifications, and made to take the place of facts, then the United States is defrauded, is deprived by deceit of the knowledge justly due to its officers in the proper discharge of its business, and it is thereby liable to obtain a less efficient employee.

The Court of Appeals for the First Circuit considered the matter in *Curley v. United States* (130 Fed., 1). Here again was a fraud practiced upon the Civil Service Commission in connection with an appointment. The court, after reviewing a number of

cases in which the significance of the word "defraud" was involved, said (p. 12):

* * * These cases are not cited as having a direct bearing upon the construction of the statute in question but as showing that the word "defraud" has a different meaning when used in connection with the government and the law than when used with reference to fraudulent interference with individual property rights, and that the law, and its administration through the instrumentalities of the government, may be defrauded.

The conviction in that case was sustained.

In *Haas v. Henkel* (216 U. S., 462) the statute involved was section 5440, which punishes a conspiracy "to defraud the United States in any manner or for any purpose." The fraud in that case consisted in securing from the Bureau of Statistics of the Department of Agriculture, by means of bribery, information of crop conditions in advance of the official promulgation of reports. The court said (pp. 479, 480):

These counts do not expressly charge that the conspiracy included any direct pecuniary loss to the United States, but as it is averred that the acquiring of the information and its intelligent computation, with deductions, comparisons and explanations involved great expense, it is clear that practices of this kind would deprive these reports of most of their value to the public and degrade the department in general estimation, and that there would be a real financial loss. But it is not essential that

such a conspiracy shall contemplate a financial loss or that one shall result. The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government. Assuming, as we have, for it has not been challenged, that this statistical side of the Department of Agriculture is the exercise of a function within the purview of the Constitution, it must follow that any conspiracy which is calculated to obstruct or impair its efficiency and destroy the value of its operations and reports as fair, impartial and reasonably accurate, would be to defraud the United States by depriving it of its lawful right and duty of promulgating or diffusing the information so officially acquired in the way and at the time required by law or departmental regulation. That it is not essential to charge or prove an actual financial or property loss to make a case under the statute has been more than once ruled.

Among the authorities cited in support of the opinion is *Curley v. United States*, *supra*.

It is true that in the *Keitel* case (211 U. S., 370) the court accorded some force to the amplification in section 5440, "defraud * * * in any manner or for any purpose," but this rather by way of emphasis, as in the case of the German *nichts* and *gar nichts*, *i. e.*, nothing and nothing at all, than by way of adding to or changing the significance the word "defraud" would otherwise bear.

In *Hyde v. Shine* (199 U. S., 62) the contention was pressed that there was no fraud committed upon either the States or the United States, because there was no pecuniary loss to either. The States of Oregon and California, it was said, got their price for their school lands, and the United States got what it wanted, *i. e.*, these same lands for their forest reserves, and got them as it was offering generally to do, by exchanging other lands for them. But the court held that the practices of Hyde and his associates were none the less fraudulent, for they were in violation of statutes enacted by the States and the United States as a part of their public policy.

And so the civil service laws of the United States and the regulations pursuant to them were enacted as part of the public policy of the United States to secure the appointment of honest and capable men to office, and integrity and efficiency in the administration of public affairs. The forgery of the voucher and the medical certificate was intended and calculated to deceive the Civil Service Commission and to injure and defraud the United States, by bringing into a position of trust and confidence a man who, by the very means of getting into that position, demonstrated his utter unfitness for it.

It is respectfully submitted that the judgment herein should be reversed.

F. W. LEHMANN,
Solicitor General.

JUNE, 1911.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

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| THE UNITED STATES, PLAINTIFF IN ERROR, | } No. 789. |
| v. | |
| CONRAD A. PLYLER. | |

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA.*

MOTION TO ADVANCE.

Now comes the Solicitor General, on behalf of the plaintiff in error in the above entitled cause, and moves the court to advance it upon the docket for hearing at the October term, 1911.

Conrad A. Plyler was indicted in the District Court of the United States for the Western District of North Carolina charged with a violation of section 5418 of the Revised Statutes. The indictment alleged the forging of the name of Romulus D. Sapp to a voucher in an application under the civil-service rules and regulations for appointment to the position of rural letter carrier in the United States mail

service; the transmitting of a paper writing containing said false and fraudulent voucher to the Civil Service Commission; and the forging of the name of W. H. Sapp to a medical certificate in the same application.

A demurrer to the indictment was sustained, the court being of the opinion that the act complained of was not a fraud against the United States in contemplation of that section. From this judgment of the court the Government has sued out the present writ of error under the criminal appeals act.

In accordance with the provision of that act, requiring cases thereunder to be "diligently prosecuted" and giving them precedence over other cases, this motion is submitted.

Notice of this motion has been served upon counsel for the defendant in error and proof of service filed with the clerk.

FREDERICK W. LEHMANN,
Solicitor General.

APRIL, 1911.





v. *Lawrence*, 13 Blatchf. C. C. 211; *State v. Kimball*, 50 Maine, 409; *State v. Boasso*, 38 La. Ann. 202; *Cross v. North Carolina*, 132 U. S. 131; *United States v. Bunting*, 82 Fed. Rep. 883; *Palmer v. Colladay*, 18 App. D. C. 426; *Curley v. United States*, 130 Fed. Rep. 1; *Haas v. Henkel*, 216 U. S. 462; *Hyde v. Shine*, 199 U. S. 62.

Property rights of the Government are the very least of its rights. They are mere incidents, although necessary ones, to the discharge of those functions for which the Government was established, and the proper discharge of which is its paramount concern. The civil service laws of the United States and the regulations pursuant to them were enacted as part of the public policy of the United States to secure the appointment of honest and capable men to office, and integrity and efficiency in the administration of public affairs. The forgery of the voucher and the medical certificate was intended and calculated to deceive the Civil Service Commission and to injure and defraud the United States, by bringing into a position of trust and confidence a man who, by the very means of getting into that position, demonstrated his utter unfitness for it.

There was no appearance or brief filed for defendant in error.

Memorandum opinion by direction of the court. By MR. JUSTICE HOLMES.

This is an indictment for forging vouchers required upon examination by the Civil Service Commission of the United States, certifying to the character, physical capacity, etc., of the applicant, the defendant, and for presenting the same to the Commission. The District Court held that the acts were not frauds against the United States within the contemplation of R. S., § 5418, and dis-

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Opinion of the Court.

charged the defendant. The Government excepted and brought the case to this court. It now must be regarded as established that "it is not essential to charge or prove an actual financial or property loss to make a case under the statute." The section covers this case. *Haas v. Henkel*, 216 U. S. 462, 480; *Curley v. United States*, 130 Fed. Rep. 1; *United States v. Bunting*, 82 Fed. Rep. 883.

Judgment reversed.
